



Analysis of Original Bill

Author: Boerner Horvath

Sponsor:

Bill Number: AB 1791

Analyst: Davi Milam

Phone: (916) 845-2551

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Attorney: Shane Hofeling

Related Bills: See Legislative
History

Subject: Informational Returns/Reporting Requirement Update

Summary

This bill, under the Administration of Franchise and Income Tax Laws (AFTIL), would modify information return reporting requirements to the Franchise Tax Board (FTB).

This analysis only addresses the provisions of the bill that would impact the department's programs and operations.

Recommendation – No position.

Reason for the Bill

The reason for this bill is to ensure that payments made by third-party settlement organizations that process credit-card payments from third-party payers to service providers properly report nonemployee income to the FTB.

Effective/Operative Date

This bill would be effective January 1, 2020, and operative for information returns required to be filed on or after that date.

Program Background

Income received from online platform applications available to rent a house, provide car rides, or to connect and provide a number of other goods or services is part of what is commonly called the "gig economy." This is also known as the shared, digital, or peer-to-peer economy. Gig economy activity is generally taxable, even if the payer fails to issue a Form 1099-K *Payment Card and Third Party Network Transactions*, 1099-MISC *Miscellaneous Income*, or Form W-2 *Wage and Tax Statement*, or other income statement.

Federal/State Law

Federal law generally requires federal information returns for payments made in the course of a trade or business to another person, for, among other items, rent, salaries, wages, compensations, remunerations, and income of \$600 or more in any taxable year.¹ A copy of the information return must be provided to the payee.

Nonemployee compensation is generally reported on Form 1099-MISC.

Federal law (Internal Revenue Code (IRC) section 6050W) generally requires payment settlement entities to report payment card and third party network transactions to payment recipients and the Internal Revenue Service (IRS). Federal law provides that a third party settlement organization is only required to report if:

- the amount exceeds \$20,000, and
- the aggregate number of such transactions exceeds 200.

Payment settlement entities should report these payments on Form 1099-K *Payment Card and Third Party Network Transactions*² by January 31 of the year following the calendar year for which the information return is made and provide a written copy to each payment recipient showing:

- the name, address, and phone number of the information contact of the person required to make such return, and
- the gross amount of the reportable payment transactions with respect to the person required to be shown on the return.

The statement may be furnished electronically, and if so, the email address of the person required to make the information return may be shown in lieu of the phone number. In general, a person with only a foreign address is not treated as a participating payee.

Federal law imposes penalties for failure to file correct and timely information returns. The penalty is \$50 per return for information returns filed within 30 days. However, the penalty rates and maximums increase based on the period delinquent, and are subject to inflationary adjustment. If required to file electronically (more than

¹ See IRC section 6041 (a).

² See [the IRS Sharing Economy Tax Center](https://www.irs.gov/businesses/small-businesses-self-employed/sharing-economy-tax-center#third) (https://www.irs.gov/businesses/small-businesses-self-employed/sharing-economy-tax-center#third).

250 information returns), a penalty of up to \$270 per return may be imposed for failure to file electronically.³ More severe penalties may be imposed for intentional disregard of the filing requirements.

State law generally provides that the FTB reporting requirements are the same as the IRS reporting requirements.⁴ The FTB currently participates in the IRS combined reporting program, which generally allows taxpayers to submit an information return to the IRS and, once the IRS captures the information, it is then forwarded to FTB.⁵

State law⁶ specifically conforms to IRC section 6050W, relating to returns relating to payments made in settlement of payment card and third-party network transactions.

State law may also impose a penalty for failing to file or correctly file information returns.⁷

Existing state law imposes tax on the income earned by individuals, estates, trusts, and certain business entities. California residents are taxed on all income, including income from sources outside California. This includes all wages and salaries earned while a California resident, regardless of where the services were performed. Part-year residents of California are taxed on all income received while a resident, including income from sources outside California and regardless of where the services resulting in the income were performed, and only on income from California sources while a nonresident.⁸ In general, nonresidents of California are subject to California income tax on all income from California sources.⁹ The tax for individuals is computed on a graduated scale at rates ranging from 1 percent to 13.3 percent.

³ See [IRS Publication 2019 General Instructions for Certain Information Returns](https://www.irs.gov/pub/irs-prior/i1099gi--2019.pdf) (https://www.irs.gov/pub/irs-prior/i1099gi--2019.pdf)

⁴ See [A Guide to Information Returns](#) on the IRS website for a list of all the required returns and what to report. See AFITL section 18631 for information on state law conformity to federal information return requirements.

⁵ See [When to File with the FTB](https://www.ftb.ca.gov/businesses/infortrns/when2file.shtml). (https://www.ftb.ca.gov/businesses/infortrns/when2file.shtml)

⁶ See AFITL section 18631(c)(24).

⁷ See AFITL section 19183.

⁸ R&TC section 17041.

⁹ R&TC sections 17041 and 17951. Limited exceptions apply for merchant seamen, air carrier, rail carrier, and motor carrier employees, as well as military service members.

Income from sources within California includes income from all of the following:

- Real or tangible personal property located in California;¹⁰
- A business, trade, or profession carried on in California;¹¹
- Income from stocks, bonds, notes, bank deposits and other intangible personal property having a business or taxable situs in California;¹²
- Rentals or royalties for the use of, or for the privilege of using in California, patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property having a taxable or business situs in California;¹³ and
- Total compensation for periods employees are employed in California or perform personal services in California.¹⁴

This Bill

This bill, under the AFITL, would require:

- Any person required to file a federal Form 1099 with respect to a nonresident who performed services within the state during the taxable year to file a copy of the form with the FTB.
- Any person required to file an information return pursuant to IRC section 6050W, relating to returns relating to payments made in settlement of payment card and third party network transactions, within 30 days of the date the filing is due, to file a duplicate with the FTB of those information returns on which the recipient has an address within the state.
- A third-party settlement organization to report to the FTB, and any participating payee with an address within the state, any information required by IRC section 6050W, to that participating payee.

This bill would substitute the reporting threshold in IRC section 6041 (a) in lieu of the threshold specified in IRC Section 6050W(e). Thus, this bill would require settlement organizations to make information returns once payments totaled \$600, rather than \$20,000 and 200 transactions.

¹⁰ Cal. Regs. sections 17951-2 and 17951-3.

¹¹ Cal. Regs. sections 17951-2 and 17951-4.

¹² Cal. Regs. sections 17951-2, 17952.

¹³ Cal. Regs. sections 17951-2, 17952.

¹⁴ Cal. Regs. sections 17951-2, 17951-5.

This bill would allow the FTB to authorize electronic filing of the Form 1099 and Form 1099K filed pursuant to IRC section 6050W.

This bill would define the following terms and phrases:

- “Third-party network transaction” means any transaction which is settled by a third-party settlement organization.
- “Third-party settlement organization” means a central organization which has the contractual obligation to make payment to participating payees of third-party network transactions.

The FTB would be allowed to adopt regulations as necessary or appropriate to implement the purposes of this section, including regulations related to electronic filing.

Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code would not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the FTB.

This bill would impose penalties for failure to provide the information that would be required by this bill pursuant to the provisions of Chapter 9. Violations (commencing with Section 19701).

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process.

Implementing this bill would require changes to existing tax forms and instructions and information systems.

This bill could create duplicate California reporting requirements for third-party settlement organizations as state law currently conforms to federal information reporting requirements. For clarity and ease of administration, the author may wish to amend the bill.

The bill is silent on the due date by which the information returns for nonresidents would be due to the FTB. For clarity and ease of administration, the author may wish to amend the bill.

Legislative History

Research of California legislation found no legislation similar to the provisions of this bill.

Other States' Information

Since this bill would create a California reporting requirement, a review of other states' income tax laws would not be relevant.

Fiscal Impact

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

Economic Impact

Revenue Estimate

This bill as introduced would not impact state income or franchise tax revenue.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

This bill would require taxpayers to either file a copy of the federal form 1099 or submit an information return pursuant to IRC section 6050W to the FTB. This reporting requirement would not change the calculation of tax, therefore it would not impact state income or franchise tax revenue.

Policy Concerns

This bill would create differences between federal and California tax law, thereby increasing the complexity of California tax return preparation.

Legislative Staff Contact

Davi Milam
Legislative Analyst, FTB
(916) 845-2551
davi.milam@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484
jame.eiserman@ftb.ca.gov

Jahna Carlson
Asst. Legislative Director, FTB
(916) 845-5683
Jahna.carlson@ftb.ca.gov